

charged that the false circulars accompanied the drug into interstate commerce and all arrived at their common destination simultaneously. The information in the instant appeal alleges no such facts and, on the contrary, cannot be construed as charging that the drug and labels were in interstate commerce at the same time, much less introduced therein at the same time. *United States v. 7 Jugs of Dr. Salsbury's Rakos*, 53 F. Supp. 746, has similar facts and follows the *Research Laboratories* case.

"Appellee also cites *United States v. Lee*, (CCA-7), 131 F. 2d 464. The complaint there sought an injunction because of an entirely different offense—the placing of the drug and false printed matter together *after* the interstate shipment in violation of 331 (k), referred to in our footnote above. It in no way supports the information purported to be based upon the claimed violation of 321 (m) at the time of shipment, to which appellant demurred.

"These three cases were civil proceedings and not criminal prosecutions. They construe the Act liberally. The question was raised at the hearing here whether in construing the Act as the basis of a criminal prosecution there should be a similar construction against the accused. Cf. the recent case of *Kraus & Bros., Inc. v. United States*, 327 U. S. 614, 621, construing in a criminal proceeding the Emergency Price Control Act which, like the Food, Drug, and Cosmetic Act, also afforded civil relief. There the Supreme Court states

This delegation to the Price Administrator of the power to provide in detail against circumvention and evasion, as to which Congress has imposed criminal sanctions, creates a grave responsibility. In a very literal sense the liberties and fortunes of others may depend upon his definitions and specifications regarding evasion. Hence to these provisions must be applied the same strict rule of construction that is applied to statutes defining criminal action \* \* \*

"However, we think that, whatever the criterion of construction; the ordinary use of the word 'accompanying' which we have here accepted is that applicable.

"After overruling the demurrer, the case was tried on a stipulation of facts which stated that the shipment of labels was received by the consignee on February 11, 1944, and the drug on April 25, 1944, clearly establishing that the two did not accompany each other when introduced into interstate commerce nor at any time in that interstate transit. It was also stipulated that they were exhibited together in the consignee's store. Here there might be said to be accompaniment *after* the interstate commerce was completed, but nothing is stipulated as to appellant's then ownership or control of the drug and labels or her participancy in these later acts to bring her within 331 (k), a section not involved in the information.

"The judgment is reversed, the case is remanded, and the information ordered to be dismissed."

**2376. Misbranding of solution of magnesia sulfate with citrate of magnesia. U. S. v. Roma Extract Co., Vincenzo Contrino, and Joseph Graceffa. Pleas of guilty. Fine of \$50 against each defendant.** (F. D. C. No. 23581. Sample Nos. 57179-H, 57635-H.)

**INFORMATION FILED:** May 5, 1948, District of Massachusetts, against the Roma Extract Co., a partnership, Boston, Mass., and Vincenzo Contrino and Joseph Graceffa, partners.

**ALLEGED SHIPMENT:** On or about June 13 and December 30, 1946, from the State of Massachusetts into the State of Rhode Island.

**NATURE OF CHARGE:** Misbranding, Section 502 (a), the words "Citrate Magnesia" molded into the bottles of the article and "Citrate of Magnesia" appearing on the shipping cartons were false and misleading, in that such words represented and suggested that the article consisted of solution of magnesium citrate, commonly known as citrate of magnesia, whereas the article was essentially a solution of epsom salt; Section 502 (i) (1), the container of the article was so made and formed as to be misleading, in that the container resembled the bottle commonly used as a container for citrate of magnesia and bore the words "Citrate Magnesia" molded into the glass; and, Section 502 (i) (2), the article was an imitation of another drug, "Solution of Magnesium Citrate," commonly known to the trade and the public as citrate of magnesia.

**DISPOSITION:** June 8, 1948. Pleas of guilty have been entered, the court imposed a fine of \$50 against each defendant.